

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

DANIEL EZIEL RAY, JR,

Plaintiff,

vs.

DANIEL PATTERSON, et al.,

Defendants.

No. 07-CV-0098-DEO

ORDER

This matter is before the Court pursuant to, "Report And Recommendation Of Dismissal" (Docket No. 43, 10/21/2011) issued by Chief United States Magistrate Judge Paul A. Zoss.

I. STANDARD OF REVIEW FOR REPORT AND RECOMMENDATION

The standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1).

A district judge is only required to make a de novo review of "those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). Therefore, portions of the proposed findings or recommendations to which no objections are filed are reviewed only for plain error. See United States v. Maxwell, 498 F.3d 799, 801 n.2 (8th Cir. 2007) (reviewing factual findings for "plain error" where no objections to the magistrate judge's report and recommendation were filed).

II. FACTS

Judge Zoss's report appropriately sets out the factual background and references the pertinent hearings held and pleadings filed in this case. All facts as set out in the Report and Recommendation are hereby incorporated as if fully set out herein.

Judge Zoss's report and recommendation states in part:

On this record, the court recommends that this case be dismissed with prejudice. See Fed. R. Civ. P. 41(b) (involuntary dismissal for failure to prosecute or

comply with court order); *United States v. Meyer*, 439 F.3d 855, 860 n.7 (8th Cir. 2006)(citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-45, 111 S. Ct. 2123, 2132-33 (1991), for the proposition that "federal courts have the inherent power to . . . dismiss an action sua sponte for failure to prosecute."); *Tyler v. Iowa State Trooper Badge No. 297*, 158 F.R.D. 632, 637 (N.D. Iowa 1994).

Objections to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b) must be filed within 14 days of the service of a copy of this Report and Recommendation.

Docket No. 43.

This Court has reviewed the record and the filed pleadings and acknowledges that there have been no objections filed to the Report and Recommendation. This Court is persuaded, upon review of Chief Magistrate Judge Zoss's findings and conclusions, that there are no grounds to reject or modify them.

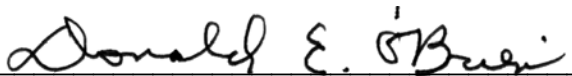
III. CONCLUSION

Based upon the facts set out in Judge Zoss's report and recommendation which are, as mentioned, adopted herein, this Court hereby finds that good cause exists to accept the Report and Recommendation (Docket No. 43).

IT IS THEREFORE HEREBY ORDERED for all the reasons set

out in the adopted Report and Recommendation, this matter is dismissed with prejudice due to Plaintiff's failure to respond to Court orders and prosecute the action.

IT IS SO ORDERED this 14th day of November, 2011.

A handwritten signature in cursive script, reading "Donald E. O'Brien", is written over a horizontal line.

Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa